IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1048 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHANUKANT L THAKKAR

Versus

STATE OF GUJARAT

Appearance:
MR AB MUNSHI for Appellant
MR PR ABICHANDANI, AGP for Respondents No. 1-2
RULE SERVED for Respondent No. 3-8

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 28/07/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

Heard learned counsel Shri Munshi for the

appellant. The appellant claims to be a social worker. He had filed Special Civil Application No.11091 of 1993 before this court praying for a direction to call for the records for the sanction granted by respondent no.3 Bhuj Municipality to the private respondent no.6 - Shri Shamjibhai Premjibhai Patel on 23rd April, 1991 and to quash and set aside the same sanction. He had also prayed for a declaration that the land admeasuring 575.37 sq. mtrs. was Government land which was encroached upon by the private respondent no.5 - Shri Salen Mohammed Abdulla Kumbhar, the possession of which was taken over by the office of respondent no.4 - City Survey Superintendent, Bhuj. Civil Suit No.300 of 1985 was filed by the private respondent no.5 - Shri Salen Mohammed before the Court of Civil Judge (S.D.), Kuchchh at Bhuj challenging that action, which was decreed in favour of original plaintiff - respondent no.5 by the Trial Court by its judgment and decree dated 26th December, 1989 whereby the original defendants i.e. State Government and Municipal authorities were directed not to demolish the construction of 'Nibhada', which was in the possession of respondent no.5, situated at the site, wall around the same and house situated thereon without following the legal procedure. The said decree was the subject matter of Appeal No.18 of 1990 filed by the Bhuj Municipality before the District Court at Kuchchh at Bhuj. It appears that the respondent no.6 entered into some agreement with private respondent no.5 - Salen Mohammed (original plaintiff) in respect of the land in question and sought B.U. permission from respondent no.3 - Bhuj Municipality and the permission was granted on 23rd April, 1992 in favour of respondent no.6 - Shri Shamjibhai Patel. The present appellant - petitioner made several representations in writing to the Government and concerned authorities to stop the development of the said lands without any reasons. Therefore, at last by way of Special Civil Application No.11091 of 2003, he approached this court with a prayer to stop the construction on the said land which is a Government land and sought declaration that the land in question was Government land, therefore, it should be declared as Government land on which no construction can be permitted to be carried out by the private respondent no.6.

2. Before the learned Single Judge, on behalf of the respondent Municipality, it was contended that the petitioner had no locus standi to challenge the petition and that he had approached this court by way of this petition only when he failed in his attempt to be impleaded as party defendant in the proceedings pending

before the Appellate Court in the appeal filed by the Municipality against the judgment and decree passed by the Trial Court in Regular Civil Suit No.300 of 1985 filed by the original plaintiff - Salem Mohammed Abdulla Kumbhar - private respondent no.5. From the order of the learned Single Judge, it clearly appears that the appellant - petitioner did make an application under Order 1 Rule 10(2) of the Code of Civil Procedure in Regular Civil Appeal No.18 of 1981 filed before the court of District Judge, Kuchchh at Bhuj for impleading him as party respondent to the said proceedings. However, the said application (Exh.21) filed in R.C.A. No.18 of 1981 was dismissed by the learned District Judge on 14th December, 1992 by observing that the said litigation cannot be said to be a public interest litigation. The learned District Judge has also observed, in his order, that for the reasons best known to the applicant - present appellant, he had never thought it fit to apply before the Trial Court for impleading him as party defendant in the suit filed by the plaintiff - present respondent no.5 - Salen Mohammed and only at the appellate stage, he had made such application. The appellant - petitioner, aggrieved by the order dated 14th December, 1992 passed by the learned District Judge, dismissing his application (Exh.21) filed in Regular Civil Appeal No.18 of 1991, filed revision application before this court which was also rejected by the learned Single Judge of this court.

2.1 In view of the above facts and in view of the above, the learned Single Judge dismissed the petition on the ground that the petitioner had no locus standi to maintain the petition as well as on the ground that several disputed questions of facts were involved in the petition which cannot be considered and decided in the writ petition filed by the petitioner under Article 226 of the Constitution. In view of the above discussion, there is hardly any scope for the interference by this court in Letters Patent Appeal against the judgment and order passed by the learned Single Judge dismissing the writ petition of the appellant - petitioner.

2.2 Before parting, we must state that the learned Single Judge recorded the statement of the then learned Government Pleader Shri Nanavati appearing for the State of Gujarat that after following necessary procedure in accordance with law, if any encroachment is found in the Government land, the Government will take appropriate action for the removal thereof within three months. In view of this statement made at the bar by the learned Government Pleader for the State of Gujarat, the learned

Single Judge also expressed the hope in his judgment that

> "...The State of Gujarat is duly represented and it will be reasonable to assume that it can protect its proprietory interest in its lands and does not require the aid of the petitioner by way of these proceedings, particularly when the statement to the above effect is made by the learned Government Pleader."

However, it was vehemently submitted by learned counsel Shri Munshi for the appellant that in spite of the aforesaid statement made at the bar by learned Government Pleader, no concrete steps were taken by the Government to remove the encroachment. If it is so, then it would be open to the appellant to move the concerned authority for taking appropriate action in the matter for removing the encroachment, if any, made on the Government land. It is hoped that as and when such application is made before the concerned authority, then the concerned authority may immediately take legal action in the matter for removing the encroachment, if any, made on the Government land. With these observations, this appeal is dismissed.

(B.J. Shethna, J.)

(M.C. Patel, J.)

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